Supreme Court, U.S.
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No. 87-1892

In The
Supreme Court of the United States
October Term, 1987

GLADYS COK,

Petitioner,

v.

LEO COK, *et al.*,

Respondents.

MOTION TO DISMISS APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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QUESTION PRESENTED

DID THE PETITIONER FAIL TO SATISFY THE REQUIREMENTS OF 28 U.S.C. § 1441 *ET SEQ.* AND THEREFORE THE RHODE ISLAND FAMILY COURT RETAINED JURISDICTION OVER PETITIONER'S SUIT AT ALL TIMES?

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STATEMENT OF THE CASE

Petitioner, GLADYS COK and LEO COK were granted an absolute divorce on the grounds of irreconcilable differences on March 25, 1982. Because of the acrimonious and completely uncooperative attitude of both parties, the Court was required to appoint a Guardian Ad Litem, Louis J. Cosentino. The Court ordered that reasonable fees of said appointee were to be paid from the proceeds from the sale of the real estate of the parties. Both parties appealed to the Rhode Island Supreme Court and filed briefs pro se ipso. The lower Court's decision was upheld. See *Cok v. Cok,* 479 A.2d 1184 (R.I. 1984).

On or about October 4, 1984 petitioner attempted to file a defective petition of removal in the United States District Court for the District of Rhode Island under 28 U.S.C. § 1441 (1973). On November 9, 1984, the Court sua sponte rejected the petition as being defective and remanded the petition to State Family Court. See *Cok v. Cosentino,* No. 84-0543-S, Slip. Op. (D.R.I. Nov. 9, 1984). This Decision and Order became final when the United States Court of Appeals for the First Circuit ruled that it was not reviewable.

As petitioner had at no time removed the action from the jurisdiction of the State Family Court, Judges Healey, Gallogly, and Fay continued to enter orders in petitioner's case. The Family Court appointed Allen Kirshenbaum to the role of Commissioner to handle the sale of the aforementioned real estate. Petitioner filed eighteen (18) appeals from various actions and orders of the Family Court on the basis of lack of jurisdiction. The Rhode

Island Supreme Court consolidated these appeals and addressed them in *Cok v. Cok*, 533 A.2d 534 (R.I. 1987). The Court held that jurisdiction had remained in the Family Court and that the issues raised by petitioner were blantantly frivolous.

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ARGUMENT

NO REMOVAL WAS EFFECTED AS THE PETITIONER TO SATISFY THE REQUIREMENTS OF 28 U.S.C. 1441 ET SEQ. AND THEREFORE THE RHODE ISLAND FAMILY COURT HAD RETAINED JURISDICTION OVER PETITIONER'S SUIT AT ALL TIMES.

The right of removal from a State Court to a Federal Court exists only in certain enumerated classes of action. Unless the petition for removal shows on its face that the underlying action falls into one of the enumerated classes it will not be removed. 28 U.S.C. 1441.

The underlying action in the instant case arises out of a domestic relations suit. It is well settled that domestic relations actions are purely state matters. See *Anderson v. State of Nebraska*, 530 F. Supp. 19 (D. Neb. 1981); *Blank v. Blank*, 320 F. Supp. 1389 (W.D. PA. 1971). Matters that are non-severable and ancillary to divorce proceedings are also deemed to be outside of federal jurisdiction. *E.g., In Re Marriage of Pardee*, 408 F. Supp. 666 (C.D. Cal. 1976); *Druen v. Druen*, 247 F. Supp. 754 (D. Colo. 1965).

Assuming, arguendo, that petitioner had stated a federal question in her petition for removal, it would still be ineffective as she failed to satisfy the procedural require-

ments of 28 U.S.C. § 1446(a)(b) and (d). Petitioner never filed a "verified" petition 28 U.S.C. § 1446(a); it was not accompanied by "a short and plain statement of the facts which entitle [her] to removal", *Id.*, nor by "a copy of all process, pleadings and order served . . . in such [underlying] action." *Id.*

There is nothing in the record to suggest that Ms. Cok filed her petition within thirty (30) days of receiving either a copy of the initial pleading upon which such action is based within thirty (30) days after receipt of an amended pleading. "'(T)he time limitation is mandatory and must be strictly applied and where a party fails to file a petition within the applicable time limits (s)he is [thereafter] precluded from doing so.'" *Gorman v. Abbot Laboratories*, 629 F. Supp. 1196, (D.R.I. 1986) quoting *Perrin v. Walker*, 385 F. Supp. 945, 948 (E.D. Ill. 1974).

Petitioner also failed to post a bond in the proper form with sufficient surety. 28 U.S.C. 1446(d).

It is well settled that once the requirements for removal are fulfilled and the requisite notice is given the District Court has exclusive jurisdiction over the case. See *Berberian v. Gibney*, 514 F.2d 790 (1st Cir. 1975); *Cavanagh v. Cavanagh*, 119 R.I. 479, 380 A.2d 964 (1977). In the instant case the requirements of 28 U.S.C. § 1441 et seq. were not fulfilled; hence there was no removal and the Rhode Island Family Court never lost jurisdiction over the case. To allow Ms. Cok her appeal would allow her to continue her series of

> "repeated, continuous, and frivolous appeals from every decision of the Family Court simply because

she disagrees or disapproves of each one. The judicial officers of the state and the administrative personnel of our courts try at all times to be as helpful with and as understanding as possible of the procedural problems faced by pro se litigants. However, this policy of procedural leniency has its limits. We will not permit persons who abuse that policy to harass our personal or monopolize their time with issues that are utterly without merit." *Cok v. Cok*, 533 A.2d 534 (R.I. 1987).

CONCLUSION

For the foregoing reasons petitioner's appeal must be denied.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GLADYS COK	)	
	)	
v.	)	C.A. No.
	)	84-0543-S
LOUIS J. COSENTINO	)	

MEMORANDUM AND ORDER

BRUCE M. SELYA, United States District Judge.

The above-captioned action was filed in this court on October 4, 1984, supposedly as a removed case in furtherance of 28 U.S.C. §§ 1441 et seq.[1] This court has recently had occasion to conduct an initial review of the civil action file. In so doing, the court is mindful that the petitioner, Gladys Cok, appears pro se; thus, her pleadings must be viewed more tenderly than those of a represented party. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Yet, this ruthfulness knows some bounds; the duty to be less stringent with pro se pleadings does not require the court to conjure up unpled allegations or to twist what is readily apparent to fit a pro se suitor's distorted view of the world. *E.g., McDonald v. Hall*, 610 F.2d 16, 19 (1st Cir. 1979).

The papers in this cause reflect an almost total lack of appreciation on Ms. Cok's part of the conceptual under-

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[1]The removal was ostensibly effected from the Rhode Island Family Court (Providence County). Despite the caption which the petitioner has utilized here, the state court case bears an inverse caption, as Cosentino claimed there against Ms. Cok.

pinnings of federal removal jurisdiction, as well as a blithe disregard of the applicable legal requirements. To identify but a few of the petitioner's many failings:

(1) The petition for removal in no way shows that the underlying action is one of which this court had "original jurisdiction." 28 U.S.C. § 1441(a).

(2) The underlying action is one ancillary to a matrimonial proceeding in the Rhode Island Family Court. It is well settled that such domestic disputes are not removable. *E.g., Matter of Marriage of Smith,* 549 F. Supp. 761 (W.D. Tex. 1982); *Estilette v. Estilette,* 402 F. Supp. 1078 (W.D. La. 1975). Jurisdiction is likewise to be eschewed vis-a-vis non-severable matters ancillary to divorce proceedings. *E.g., In re Marriage of Pardee,* 408 F. Supp. 666 (C.D. Cal. 1976); *Druen v. Druen,* 247 F. Supp. 754 (D. Colo. 1965). A suitor cannot "use a federal forum as a panacea for [her] matrimonial ills." *Rawlinson v. State,* C.A. No. 84-0495-S, slip op. at 4 (D.R.I. Sept. 17, 1984).

(3) The procedure for removal, 28 U.S.C. § 1446, has been grossly abused. The petition was not "verified," 28 U.S.C. § 1446(a); it was not accompanied by "a short and plain statement of the facts which entitled [her] to removal," *id.*, nor by "a copy of all process, pleadings and orders served . . . in such [underlying] action." *Id.* The petition is otherwise defective. In short, the petitioner has substituted her own vision of the removal universe for that promulgated by the Congress.

(4) It nowhere appears that the removal was effected within the time limits mandated by 28 U.S.C. § 1446

(b); nor do facts appear from which this court can so conclude.

(5) The removal was not accompanied by a bond in proper form with sufficient surety. 28 U.S.C. § 1446(d). As Gertrude Stein observed, "a rose is a rose is a rose;" but the petitioner's purported bond is not a bond at all. Its contents are overly vague. *Cf. Alexandria National Bank v. Willis C. Bates Co.*, 160 F. 839 (C.C. Va. 1908). And, it is signed by a self-proclaimed minister[2] without so much as a half-hearted swipe at compliance with the applicable strictures. *See* Local Rule 38 of this court.

(6) Ms. Cok has chosen completely to ignore the imperatives of Local Rule 36(b) of this court.

No useful purpose would be served by attenuating the list of deficiencies. It suffices to say that, as the taxonomy set out above plainly shows, the petitioner seeks to plunge this court headlong into maelstrom of what she herself describes as a "long and prolonged divorce situation," Petition ¶ 1, without so much as a colorable predicate for so doing. If permitted to endure, such a heavy-handed intrusion into the disciplined operation of the state family court would, on this record, be a flagrant abuse of federal judicial power. *Cf. Middlesex County Ethics Committee*, 457 U.S. 423 (1983). As this court remarked in *Gordon, supra* (554 F. Supp. at 799):

> Historically, it has been the policy of the federal courts to allow the state judicial system to conduct its proceedings free from federal interference. . . .

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[2]The Reverend Gordon is no stranger to this court. *See, e.g., Gordon v. Crouchley*, 554 F. Supp. 796 (D.R.I. 1982).

See also Rawlinson, supra, slip op. at 2-4. To permit Ms. Cok to use a federal forum at her whim as an instrument to torture her opponents and to bedevil and confound the orderly administration of the law by the state courts would not be justice; it would be, charitably viewed, a caricature of justice. And, this court will neither buy Ms. Cok's cartoons nor play her capricious game.

While no motion to dismiss or to remand the instant action is pending, the federal district court has an independent duty to ascertain whether its subject matter jurisdiction has been properly invoked. *Martin v. Wilkes-Barre Pub. Co.,* 567 F. Supp. 304 (M.D. Pa. 1983); *Fort v. Ralston Purina Co.,* 452 F. Supp. 241 (E.D. Tenn. 1978). The court, sua sponte, has the right and the obligation to raise jurisdictional or kindred defects apparent on the face of the removal papers. *VanHorn v. Western Electric Co.,* 424 F. Supp. 920 (E.D. Mich. 1977); *Dunkin Donuts v. Family Enterprises, Inc.,* 381 F. Supp. 371 (D. Md. 1974). *See generally* 28 U.S.C. § 1447(c). So here, the infirmities of the removal being visible to the blindest of eyes.

The instant action was improvidently removed and the filings in this court were legally insufficient to effect removal. The case is remanded in its entirety to the Rhode Island Family Court (Providence County); and the clerk of this court shall mail a certified copy of this

order to the clerk of said court. *See id.* The state family court may proceed unhindered with the case.

It is so ordered.

Enter:

/s/ Bruce M. Selya
BRUCE M. SELYA
United States District Judge

November 9, 1984

APPENDIX B

Gladys L. COK,

v.

Leo COK,

Nos. 84-585-Appeal, 86-176-Appeal and 87-155-Appeal.
Supreme Court of Rhode Island.

Nov. 17, 1987.

Gladys L. Cok, pro se.
Leo Cok pro se.

OPINION

PER CURIAM.

These matters are before the Supreme Court on an order consolidating them and placing them on the show-cause calendar for argument.

In an interlocutory judgment Gladys Cok, Ph.D., and Leo Cok, M.D., were granted an absolute divorce based on irreconcilable differences following a protracted hearing in Family Court. Both parties appealed to this court. The Family Court proceeding was fully examined and discussed in our opinion in *Cok v. Cok,* 479 A.2d 1184 (R.I.1984). In that appeal and in the matters now before us the parties have appeared without counsel.

Before the court at this time are, by Gladys Cok's own count, eighteen appeals by her from various actions and orders of the Family Court. Leo Cok presented oral argument on one issue and an attorney on his behalf submitted a memorandum and argued a separate issue.

We have reviewed in detail, the issues raised by Gladys Cok and we are of the opinion that all of them are blatantly frivolous. What we have here are attempts to appeal from orders that are interlocutory and efforts to relitigate matters already decided in this court's opinion on the original appeal. Also, Glayds Cok continues to argue matters that have been finally adjudicated and which are not now before this court for review. An example of this last category is her relentless insistence that the Family Court had lost jurisdiction over this case as a result of her attempt at removal of the case to the United States District Court for the District of Rhode Island under 28 U.S.C.A. § 1441 (1973).[1] In a written decision and order, the United States District Court judge set forth in detail the reasons why this case was not removable. He ruled that the subject-matter jurisdiction of the Federal Court was never invoked, and he stated specifically that Gladys Cok's filings in the Federal Court were legally insufficient to effect removal. That decision and order became final when the United States Court of Appeals for the First Circuit ruled that it was not reviewable. Nevertheless, Gladys Cok continues to insist that the Family Court had lost jurisdiction. She asserts again and again that the appointment of a commissioner to sell certain real estate owned by these irrevocably estranged parties was void for lack of jurisdiction. The fact is that the Family Court at no time lost jurisdiction. Furthermore, we confirm the appointment of the commissioner to act under the direction

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1. Since only a defendant may remove a case, Gladys Cok, plaintiff in these proceedings, conveniently reversed the caption of the Family Court case in order to qualify as a defendant or respondent before the Federal Court.

of the Family Court in these matters. Another source of Gladys Cok's appeals is her insistence on a right to jury trial in these matters, all of which are ancillary to divorce proceedings, in which trial by jury has never been afforded.

We would point out to Gladys Cok that this court does not intend to entertain repeated continuous, and frivolous appeals from every decision of the Family Court simply because she disagrees or disapproves of each one. The judicial officers of the state and the administrative personnel of our courts try at all times to be as helpful with and as understanding as possilbe of the procedural problems faced by pro se litigants. However, this policy of procedural leniency has its limits. We will not permit persons who abuse that policy to harass our personnel or monopolize their time with issues that are utterly without merit.

Leo Cok, like his former wife, continues to argue against the approval of a report and bill for services rendered by the guardian ad litem who was appointed by the Family Court for the minor child of the parties. In *Cok v. Cok,* 479 A.2d at 1190, this court approved the appointment of the guardian ad litem. We found that the action of the parties more than justified the appointment. We conceded that these appointments might well have made the cost of this litigation a heavier burden for the parties. However, we found that "[t]he stubbornness and unwillingness either to compromise or to cooperate on the part of the parties * * * have indeed been expensive, not only in fees paid to counsel, but also in additional fees to the guardian ad litem and the conservator as well. For this

expense the parties have no one to blame but themselves." *Id.* We are still of that opinion.

The final issue, one briefed and argued by counsel for Leo Cok, may have merit. After the hearing on the cross-petitions for divorce, the Family Court awarded both parties joint custody of the minor child with physical possession to Gladys Cok. That judgment also assigned the marital domicile to her so that she, as the custodial parent, would have the use of that residence free and clear of any encumbrances. This was done, in part, to provide a secure and acceptable setting in which the child could be raised and to enable the mother "to sufficiently maintain herself and the child with her income and the child support presently ordered."

However, in December of 1985 a justice of the Family Court, after hearing, awarded custody and physical possession of the minor child to the father. And, to effectuate the child's wishes fully, the court awarded physical possession of the marital domicile to Leo Cok so that the child could live in what was his home in his father's custody.

Later, in an order dated March 14, 1986, another judge of the Family Court vacated the earlier order awarding possession of the marital domicile to Leo Cok for the benefit of the child. This judge stated that the court had no further jurisdiction over the marital domicile that had been conveyed to Gladys Cok by a commissioner appointed by the court pursuant to the original divorce decree.

Counsel for Leo Cok cites G.L. 1956 (1985 Reenactment) § 8-10-3 which provides in part that the Family Court could hear and determine

> "other matters arising out of petitions and motions relative to real and personal property in aid thereof * * * and such other equitable matters arising out of the famliy relationship, wherein jurisdiction is acquired by the court by the filing of petitions for divorce."

Consequently, he argues, the Family Court justice was in error in concluding that property once assigned under G.L. 1956 (1981 Reenactment) § 15-5-16.1, as amended by P.L. 1982, ch. 403, § 1 is not subject to the jurisdiction of the court when changed circumstances necessitate that the property be made available for use of a child of the parties and the new custodial parent. Since we conclude that the trial justice who denied Leo Cok's motion to require Gladys Cok to vacate the premises may have based his decision on an error of law, we sustain Leo Cok's appeal on that issue and vacate the order denying Leo Cok's motion to vacate and remand that issue to the Family Court for reconsideration. All other appeals are denied and dismissed, and the papers of this case are remanded to the Family Court for further proceedings.

FAY, C.J., and MURRAY, J., did not participate.